UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

TERRY HOLMES,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 01-19-P-H***
	)	
LINCOLN COUNTY, et al.,	***)***	
	)	
Defendant	***)***	

RECOMMENDED DECISION ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The defendants, Lincoln County, the Lincoln County sheriff, the county jail administrator and three security officers employed at the jail, move for summary judgment in this action arising out of the assault on the plaintiff by another inmate at the jail. The plaintiff does not object to the motion as to any defendant other than Aaron Mortensen, Plaintiff's Objection to Defendants' Motion for Summary Judgment ("Plaintiff's Objection") (Docket No. 11) at 1, and after consideration of the merits of the defendants' motion, I recommend that it be granted as to defendants Lincoln County, William C. Carter, Brian Lawrence, Jeffrey Rager and Eleanor Grover. With respect to Mortensen, I recommend that the motion be denied.

Summary Judgment Standard

Summary judgment is appropriate only if the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant . . . .

By like token, 'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party . . . .'" *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Cadle Co. v. Hayes*, 116 F.3d 957, 959 (1st Cir. 1997). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, "the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue." *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995) (citing *Celotex*, 477 U.S. at 324); Fed. R. Civ. P. 56(e). "This is especially true in respect to claims or issues on which the nonmovant bears the burden of proof." *International Ass'n of Machinists & Aerospace Workers v. Winship Green Nursing Ctr.*, 103 F.3d 196, 200 (1st Cir. 1996) (citations omitted).

Factual Background

The following relevant, undisputed material facts are appropriately presented in the parties' statements of material facts as required by Local Rule 56.

On February 17, 1998 the plaintiff arrived at the Lincoln County jail to begin serving a 90-day sentence for the crime of terrorizing. Defendants' Statement of Material Facts in Support of Motion for Summary Judgment ("Defendants' SMF") (Docket No. 10) ¶ 1; Plaintiff's Opposing Statement of Material Facts ("Plaintiff's Responsive SMF") (Docket No. 12) ¶ 1. On that morning, Mortensen was the shift supervisor and had assigned himself to work in the intake/booking area of the jail. *Id.* ¶ 2. Mortensen processed the plaintiff through intake/booking. *Id.* ¶ 3. As part of the booking process,

inmates are asked questions read off a computer terminal at the booking desk. *Id*. Included in the booking questions is a medical screening questionnaire which includes a question asking the inmate if he has any enemies in the facility and a question asking whether he is in need of special care of any kind. *Id*. ¶ 4. Mortensen modified the question about enemies and asked the plaintiff if he had any enemies in the facility, anyone he did not like or anyone with whom he did not want to be housed. *Id*. ¶ 5.

The plaintiff's response to this question is in dispute. As a result of the plaintiff's response, Mortensen entered the name of Walter Haycock on the plaintiff's medical questionnaire after the question about enemies in the facility. *Id*. ¶ 7. The plaintiff did not, in *haec verba*, request "protective custody" or "a no-contact order." *Id*. ¶ 8. As a matter of policy and practice, if an inmate's responses to the two questions at issue are sufficient for the officer conducting the interview to identify a risk, the information is to be logged in the intake log and the pass-on log and written on the cover sheet of the inmate's booking folder. *Id*. ¶ 9. Mortensen did not log in any such information with respect to the plaintiff, nor did he pass on the information he had received from the plaintiff about Haycock to any other jail employee. *Id*. ¶ 11. The medical questionnaire form was signed by Mortensen and the plaintiff. *Id*. ¶ 12.

All officers at the jail were required to read the pass-on log when they came on duty. Plaintiff's Statement of Additional Facts ("Plaintiff's SMF"), included in Plaintiff's Responsive SMF, ¶ 2; Defendants' Response to Plaintiff's Statement of Additional Facts ("Defendants' Responsive SMF") (Docket No. 16) ¶ 2. The notation about risk of harm to an inmate made by a booking officer would appear in this log and on a sheet hung in front of the control-room officer. *Id*. The decision whether to pass on an inmate's identification of another inmate as an enemy was left to the discretion of the booking officer or a supervisor. *Id*. ¶ 3. A booking officer who decided to make the notations

in the logs and on the cover sheet of an inmate's booking folder was expected to inform the supervisor on duty and the other corrections officers on duty that he had done so. *Id.* ¶ 2.

Mortensen made arrangements for the plaintiff to be housed in an area of the jail other than the block where Haycock was housed. Defendants' SMF ¶ 13; Plaintiff's Responsive SMF ¶ 13. At some point on February 17, 1998 the plaintiff was moved to the jail's multipurpose room, which is referred to as MP-1. *Id*. An AIDS awareness class was scheduled to be held in MP-1 around 6 p.m. on February 19, 1998. *Id*. ¶¶ 13, 15. Haycock was brought to MP-1 where the plaintiff was already present. *Id*. ¶ 15. The guard who had brought Haycock into the room left the room to get an easel for the instructor. *Id*. ¶¶ 15-16. Haycock walked over to the plaintiff and said something to the effect of letting bygones be bygones. *Id*. ¶ 16. The plaintiff claims that he turned his head because he did not want to speak to Haycock and that Haycock then began punching him. *Id*. The plaintiff estimates that the assault took less than 30 seconds. *Id*. The instructor informed the officer that a disturbance was going on in MP-1, but the officer did not observe anything when she looked into the room. *Id*. ¶ 17. When she entered the room, the officer heard one of the inmates yell to Haycock, "Stop, that is enough," and another inmate say, "Get him out of here." *Id*. ¶ 18. The officer removed Haycock from the room, although Haycock subsequently was allowed to return to the room to attend the class. *Id*. ¶¶ 18, 20.

Approximately six months before this incarceration, the plaintiff was assaulted by Haycock, who bit the plaintiff's finger deeply. Plaintiff's SMF ¶ 1; Defendants' Responsive SMF ¶ 1. The plaintiff and Haycock had no contact after this incident until the February 1998 incarceration. *Id*. There was no administrative reason why Haycock and the plaintiff could not have been completed separated from each other at the jail. *Id.* ¶ 6. Mortensen knew that the plaintiff would have contact with Haycock if Haycock went to a meeting in MP-1, where all group meetings were held. *Id*. ¶ 8.

Discussion

The plaintiff alleges that Mortensen was deliberately indifferent to the known risk that Haycock would assault him and violated his right under the Eighth Amendment to be free from cruel and unusual punishment. Plaintiff's First Amended Complaint, etc. (Docket No. 6) ¶¶ 31-32. Mortensen contends that he is entitled to summary judgment on these claims because he did not in fact draw an inference from the information allegedly provided by the plaintiff that a risk of harm existed. Defendants' Motion for Summary Judgment, etc. ("Motion") (Docket No. 9) at 10-11.

"[I]t is now settled that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (citation and internal punctuation omitted). "[P]rison officials . . . must take reasonable measures to guarantee the safety of the inmates." *Id*. (citation and internal punctuation omitted). "In particular, . . . prison officials have a duty to protect prisoners from violence at the hands of other prisoners." *Id*. at 833 (citation and internal punctuation omitted). "For a claim . . . based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm." *Id*. at 834. The prison official must also have a sufficiently culpable state of mind, one of deliberate indifference. *Id*.

"Deliberate indifference" entails something more than mere negligence, but something less than acts or omissions for the purpose of causing harm or with knowledge that harm will result. *Id*. at 835.

> [A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Id. at 837. "[A]n Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm." *Id*. at 842. Actual knowledge may be inferred. *Id*.

For purposes of his motion for summary judgment, Mortensen concedes that the plaintiff's testimony about what he told Mortensen while being booked creates a disputed question of fact "as to whether circumstantial evidence exists demonstrating that [he] was exposed to information identifying the risk of harm," Motion at 9 n.4, but relies on his affidavit to support his argument that the plaintiff cannot prove that Mortensen actually drew the inference that the plaintiff was at a substantial risk of serious harm from Haycock, *id*. at 11. Specifically, Mortensen states: "At no time did the information provided to me by [the plaintiff] during the intake/booking process provide me with information that created a belief that inmate Haycock posed any type of threat to [the plaintiff]." Affidavit of Aaron Mortensen in Support of Motion for Summary Judgment (filed with Motion) ¶ 13.

The parties disagree over the applicability of the First Circuit's decision in *Giroux v. Somerset County*, 178 F.3d 28 (1st Cir. 1999), to the facts in the summary judgment record. In that case, the inmate plaintiff alleged that he had requested protective custody due to threats from other inmates, after which he was placed on "cell feed status," which was only used for health reasons or as a form of protective custody. *Id*. at 30. The plaintiff was subsequently left in a holding cell with the inmate who had threatened him and was physically assaulted. *Id*. The First Circuit held that a juror could reasonably conclude that the shift supervisor defendant was "aware of a high probability that [the plaintiff] was vulnerable to attack from another inmate but took no action despite that awareness" and that the requisite deliberate indifference could be inferred from his failure to inform the employees on his shift of the known danger to the plaintiff. *Id*. at 33-34. While the facts in *Giroux* are not on all

fours with the facts in this case, the opinion strongly suggests that a mere denial by the prison official involved that he actually drew the inference required by *Farmer* is not enough to entitle him to summary judgment. Indeed, to hold otherwise would have the practical effect of making it impossible for inmates to bring such claims. Under the circumstances present in this case, at the very least Mortensen's credibility must be evaluated, a task that may not be undertaken by the court in the context of summary judgment. *See Domínguez-Cruz v. Suttle Caribe, Inc.*, 202 F.3d 424, 432 (1st Cir. 2000). *See also Maiorana v. MacDonald*, 596 F.2d 1072, 1076-77 (1st Cir. 1979) (cases in which state of mind is at issue usually do not lend themselves to summary judgment). In addition, the plaintiff has alleged sufficient facts[1] to allow a reasonable juror to draw the necessary inferences to allow the plaintiff to recover on his claim.

Conclusion

For the foregoing reasons, I recommend that the defendants' motion for summary judgment be **GRANTED** as to defendants Lincoln County, Carter, Lawrence, Rager and Grover and otherwise **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

[1] Specifically, the plaintiff alleges: (i) "When Cpl. Mortensen asked Plaintiff if he had any enemies in the facility, Plaintiff said, 'Yes, I have an enemy.' Mortensen then asked, 'is there anybody in here that is your enemy and point him out on this sheet.' Plaintiff looked and saw Wally Haycock's name, and Plaintiff said, 'him.' Mortensen asked why, and Plaintiff said, 'because he bit my finger half off a few months back.' Plaintiff said, 'I don't even want to be around him, he's crazy.' Holmes also said, 'don't put me with him or there will be trouble.'" Plaintiff's Responsive SMF ¶ 6 (citations omitted); (ii) that he was not familiar with the terms "protective custody," "no contact" or "administrative segregation," *id.* ¶ 8; and (iii) that Mortensen acknowledged that, if he had been given this information, it "definitely" would have created an excessive risk of physical harm to the plaintiff if he and Haycock were housed together, *id.* ¶ 10.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 15th day of November, 2001.

David M. Cohen
United States Magistrate Judge

TERRY HOLMES — JOHN P. GAUSE, ESQ.
plaintiff

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defendant

BRIAN LAWRENCE, Individually and in his official capacity as Lincoln County Jail Administrator — MICHAEL J. SCHMIDT, ESQ. (See above)
defendant

JEFFREY RAGER, Individually and in his official capacity as Sargeant Lincoln County Sheriff Dept.
defendant

MICHAEL J. SCHMIDT, ESQ.
(See above)

ELEANOR GROVER, Individually and in her official capacity as a Guard Lincoln County Sheriff Dept.
defendant

MICHAEL J. SCHMIDT, ESQ.
(See above)

AARON MORTENSEN, individually and in his official capacity as corporal, Lincoln County Sheriff's Department
defendant

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